



To the Honorable Council
City of Norfolk, Virginia

March 10, 2015

From: Darrell R. Crittendon, Director
Recreation, Parks & Open Space

Subject: Lease Agreement for Little
Creek National Pony Baseball League
at Tarrallton Park

Reviewed: W.C. Benda
Wynter C. Benda, Deputy City Manager

Ward/Superward: Ward 5

Approved: Marcus D. Jones
Marcus D. Jones, City Manager

Item Number:

PH-5

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Department of Recreation, Parks & Open Space

III. **Description**

This agenda item is an ordinance approving a two-year renewal lease agreement with Little Creek National Pony Baseball League, Inc. for the use of the ball fields at Tarrallton Park. The term of the lease will commence on April 1, 2015 and end March 31, 2017. The lease may be extended for three additional one year periods with the consent of both parties.

IV. **Analysis**

- An ordinance for a lease with the City of Norfolk is now being requested in order for Little Creek National Pony Baseball League to continue to host league practices and games at Tarrallton Park.
- Little Creek National Pony Baseball League, Inc. is responsible for the upkeep and maintenance of the ball fields at the site.
- The Little Creek National Pony League, Inc., has used the Tarrallton Park ball fields for more than 20 years.
- The Little Creek National Pony League, Inc. will make the fields available to the City and any other City approved organization according to the terms and agreements within the lease.

V. **Financial Impact**

There is no financial impact of the approval of this ordinance and lease agreement. The league will agree to pay the City an annual rental fee of One (\$1.00) Dollar.

VI. Environmental

There are no known environmental issues related to the Lease Agreement.

VII. Community Outreach/Notification

No public notification for this agenda item was conducted.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Lease Agreement

Form and Correctness Approved:

By

Office of the City Attorney

Contents Approved:

By

DEPT.

Recreation, Parks & Open Space

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF NORFOLK AND LITTLE CREEK NATIONAL PONY LEAGUE, INC. FOR THE LEASE OF CERTAIN CITY-OWNED PROPERTY LOCATED WITHIN TARRALLTON PARK, AND AUTHORIZING THE EXECUTION OF THE LEASE AGREEMENT ON BEHALF OF THE CITY.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Lease Agreement between the City of Norfolk and Little Creek National Pony League, Inc. for the lease of certain City owned property located within Tarrallton Park, a copy of which is attached hereto as Exhibit A, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Lease Agreement for and on behalf of the City, and to do all things necessary and proper to carry out its terms.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Lease Agreement as may be necessary in order to carry out the intent of the Council as expressed in this ordinance.

Section 4:- That this ordinance shall be in effect from and after 30 days from the date of its adoption.

LEASE AGREEMENT
BETWEEN THE CITY OF NORFOLK
AND LITTLE CREEK NATIONAL PONY BASEBALL LEAGUE, INC.

THIS LEASE AGREEMENT ("Lease"), made this ____ day of _____, 2015, by and between the CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia ("City") and LITTLE CREEK NATIONAL PONY LEAGUE, INC., a Virginia corporation ("League").

WITNESSETH:

1. PREMISES. City does hereby lease to League, and League hereby leases from City certain baseball fields, concession stand, storage room adjacent to the concession stand, an auxiliary storage structure and any related improvements ("Premises"), generally located within TARRALLTON PARK ("Park") a facility owned and operated by the City. A sketch of the Premises is attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein.

2. TERM OF LEASE. The term of this Lease shall be for a period of two (2) years, commencing on April 1, 2015, and ending on March 31, 2017. The term of this Lease may be extended for three additional one (1) year periods upon mutual consent of City and League evidenced in writing. City may withhold consent to extend this Lease with or without cause, in which case this Lease shall terminate.

3. RENT. League agrees to pay to City as rental, the sum of One Dollar (\$1.00), on or before the first day of April of each calendar year for the term hereof. Such rental payments shall be made payable to the "Norfolk City Treasurer" and shall be mailed or delivered to the Director of Recreation, Parks and Open Space ("Director") at 501 Boush Street, Norfolk, Virginia 23510. As additional consideration for this Lease, League agrees to properly maintain the Premises and keep the Premises in good order and repair as hereinafter set forth.

4. USE. League shall use the Premises for youth baseball recreational purposes, and any such use shall be subject to the applicable provisions of Chapter 25.2 of the Norfolk City Code. League shall not use or permit the Premises to be used for any other purpose without the prior written consent of City. League agrees that neither it nor any person or entity acting in its behalf shall charge, or allow to be charged, any member of the public an admission fee or any other fee for the privilege of attending any event related to League's use of the Premises under this Agreement.

4.1. League shall make available the Premises to City and other City approved organizations at those times and days that the League is not utilizing said Premises as provided above.

4.2. League shall provide all equipment and supplies needed to use the Premises for the purpose described herein.

4.3. League shall provide, at its own cost and expense, electricity, water, heat, air conditioning, and all other utilities related to the operation of any building or structure located on the Premises.

EXHIBIT A

4.4. League shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other Park visitors, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose. League shall not cause, maintain or permit any nuisance in, on, or about the Premises. League shall not store any materials that are considered hazardous including but not limited to chemicals, flammable materials or toxic materials on the Premises.

4.5. No modifications or improvements shall be made to Premises without prior written consent of City. Any such improvements shall be in full compliance with all applicable City codes.

4.6. League shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein, which will in any way increase the existing rate of, or affect any fire or other insurance upon the building or any of its contents.

4.7. During the term of this Lease, League is authorized to name a ball field located on the Premises and to erect a sign at the field, the size and type of which shall be subject to the approval of the Director.

5. COMPLIANCE WITH LAW AND OTHER CITY AGREEMENTS. League shall not use the Premises, or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation now in force, or which may hereafter be enacted or promulgated. League shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or relating to, or affecting the condition, use, or occupancy of, the Premises.

5.1. In addition, League shall comply with all existing City agreements with third parties that relate to or affect the terms of this Lease. In the event of a conflict between the terms and conditions of this Lease and the terms and conditions of prior agreements entered into by the City with third parties, the terms of this lease are subordinate. City will endeavor to make League aware of all agreements that the City has with third parties that may affect the terms and conditions of this Lease.

6. REPAIRS AND MAINTENANCE. League shall, at League's sole cost and expense, keep the Premises and every part thereof in good condition and repair, damage from causes beyond the reasonable control of League and ordinary wear and tear excepted. League shall upon the expiration or sooner termination of this Lease surrender the Premises to the City in good condition, ordinary wear and tear, and damage from causes beyond the reasonable control of League, excepted.

6.1. League shall be responsible for the maintenance of the grounds, including the ball fields, and any physical improvements on the subject property, whether constructed by the League or the City. League shall repair and maintain landscaping of the Premises, including mowing, edging, and chalking, trash removal, and restroom maintenance. League shall consult with the City's Director or his/her designee prior to conducting any maintenance or repair.

EXHIBIT A

6.2. League shall not be responsible for maintenance and repairs which are caused in whole or in part by the act, neglect, fault or omission of the City or its agents, employees or invitees, in which case City shall pay the cost of such maintenance and repairs.

6.3. League agrees to be responsible, at its own cost and expense, for any additional construction, and maintenance of any building or structure it occupies or uses, with all plans for any such building or structure receiving prior approval in writing by the City. It is expressly understood and agreed that any building or structure and all physical improvements or additions made by the League or at its direction shall be the property of, and solely owned by, the City from the time of completion, except that any equipment that is not fixed to the building or structure will remain the property of the League. Any such equipment installed by League shall be at the expense of the League. The League agrees to maintain such equipment in good working order by following standard maintenance procedures and to surrender any City equipment, in good condition, normal wear and tear excepted, to the City at the conclusion of this Agreement.

6.4. League shall have the right to construct physical improvements on the property subject to the plans for such construction having received prior approval in writing by the City, and subject to said improvements being in conformance with all building codes of the City of Norfolk.

6.5. Subject to the provisions of paragraph 6.3 above as to equipment not fixed to a building or structure, upon the expiration or termination of this Agreement by either party and with the consent of the City, the League may remove any physical improvements which the League has constructed on the property and which the City does not desire to retain. The removal shall be at the League's expense and the League shall repair any damages caused to the City's property by the removal of such improvements.

7. CONCESSION STAND. League shall be entitled to use of concession stand to sell food and beverages during the days and times League is utilizing the Premises as set forth in Section 4 of this Lease, such days and times to be approved by the Director. Each time the concession stand is used by League, the facility will be cleaned and all food and beverages shall be removed from the Premises.

7.1. Prior to the League offering for sale any food, drink or other items, it shall first submit to the Director a description of such food, drink or other items proposed to be sold and the price proposed to be charged therefor and shall obtain from the Director prior approval of the sale and the price to be charged. The League shall not increase any sales price approved by the Director without first obtaining the Director's approval.

7.2. League shall provide sufficient competent and courteous staff to adequately serve its patrons. The service and the quality of all food and drinks served to patrons shall be satisfactory to the Director in his/her sole discretion. In the event such service or quality are deemed unsatisfactory by the Director, he/she may order the immediate closure of the concession stand.

8. ASSIGNMENT AND SUBLETTING. League shall not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, or encumber this Lease or any interest therein, and shall not sublet said Premises or any part thereof, or any right or privilege thereto, or allow any other person (the employees, agents, servants, and invitees of League excepted) to occupy or use said Premises, or any

EXHIBIT A

portion thereof, without the prior written consent of the City. City may withhold consent at its sole discretion. Any such consent shall not be construed as a waiver of the duty of the League or any assignees or sub-lessees to obtain from the City its consent to any other assignment or sublet, or as modifying or limiting the rights of the City to require the written consent of the City to any future assignment or sublet.

9. RULES AND REGULATIONS. City, in its sole discretion, may adopt reasonable rules and regulations governing Park use. League shall faithfully observe and comply with the rules and regulations that City may from time to time promulgate. City reserves the right from time to time to make all reasonable modifications to said rules. The additions and modifications to those rules shall be binding upon League upon delivery of a copy of them to League.

10. ENTRY BY CITY. City reserves and shall at any and all times have the right to enter the Premises, without notice to League, for the purposes of inspection, and to alter, improve, or repair the Premises, providing that the business of the League shall not be interfered with unreasonably.

11. LOSS OF USE. In the event the Premises are damaged by fire or other perils, League shall not be entitled to any compensation or damages from City for loss of the use of the Premises, the loss of the League's personal property, or for any inconvenience or annoyance occasioned by such damage.

12. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS. League hereby agrees to protect, defend, indemnify and hold harmless City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with League's (or League's subcontractors, if any) negligent (or alleged negligent) performance of this Agreement, use of the Premises, or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage caused by the sole negligence or willful misconduct of City. City shall be reimbursed by League for all costs and attorney's fees incurred by City in enforcing this obligation. League will defend City at League's sole cost and expense and City shall approve selection of League's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the League.

13. INSURANCE. The League, at his expense, shall take out and keep in full force and effect, with a company authorized to do business in the Commonwealth of Virginia, public liability and products liability insurance, fire and property insurance, insuring the League and City in the amount of One Million Dollars (\$1,000,000.00) CSL for the death of or injury to any person or persons and for damage to or destruction of property, against liability from any and all claims, actions and suits that may be asserted or brought against the League, the League's agents and employees and/ or City, the City's officers, employees and agents. Evidence of such insurance naming the City, and its officers, employees and agents as additional insureds shall first be approved by the City Attorney and filed with the Director within fifteen (15) days after the commencement of this Agreement and annually thereafter.

14. DEFAULT. The occurrence of any one or more of the following events shall constitute a default under this Lease by League:

1. Non-curable defaults:

- a) The vacating or abandonment of the Premises by League.
- b) Any attempted or involuntary transfer of League's interest in this Lease without City's prior consent,
- c) If League makes, or has made, or furnishes any warranty, representation or statement to City in connection with the Lease which is or was false or misleading in any material respect when made or furnished.

2. Curable defaults:

- a) The failure by League to make any payment of rent or any other payment required to be made by League hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof by City to League.
- b) The failure by League to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by the League, where such failure shall continue for a period of ten (10) days after written notice thereof by City to League; provided; however, that if the nature of League's default is such that more than ten (10) days is reasonably required for its cure, then League shall not be deemed to be in default if League commences such cure within said ten (10) day period, and thereafter diligently prosecutes such cure to completion.

15. REMEDIES. In the event of any non-curable default or breach by League, City shall have the right to terminate this Lease and League's right to possession of the Premises immediately, and League shall immediately surrender possession of the Premises to City. In the event of any curable default or breach by League, and League's failure to cure such default or breach as set forth above, this Lease shall be terminable at City's option.

16. PARKING. All vehicles shall be parked in those areas designated for visitor parking by the Director. No vehicles shall be permitted in any other part of the Park except by permit issued by the Director pursuant to the applicable provisions of the Norfolk City Code.

17. NOTICE. All notices and demands which are required or permitted to be given by either party to the other hereunder shall be in writing. All notices and demands sent by either party shall be sent by United States Postal Service, postage prepaid, addressed as follows:

To City:

Director of Recreation, Parks and Open Space
City of Norfolk
501 Boush Street
Norfolk, Virginia 23510

To League:

Little Creek National Pony League, Inc.
P.O. Box 14071
Norfolk, Virginia 23518

18. EARLY TERMINATION. Either party may terminate this Lease, without breach or default, by providing the other party one hundred twenty (120) days written notice of such termination.
19. OBSERVATION BY CITY. The City's duly authorized agent, the Director or his designee, shall have the right to observe the League's operations at any reasonable time and as often as City deems necessary.
20. ANNUAL REPORT. The League shall file a report with the Director on or before December 31st of each year listing the officers of the League and setting forth a list of the programs conducted by the League on the subject property for the previous year. Report is to include actual usage of all fields for practice and game play, number of users and demographics to include age, sex, race, where the users live, specific services and facility conditions.
21. LICENSES AND TAXES. The League shall obtain and keep in full force and effect, at its own cost and expense, all necessary licenses and shall pay all taxes assessed against said concession operation, and any taxes assessed against the value of the League's interest hereunder.
22. AUTHORITY TO TRANSACT BUSINESSES. The League, by executing this Lease, certifies that it is authorized to transact business in Virginia as a domestic or foreign business entity as required by the State Corporation Commission, or as otherwise required by law. The League further certifies that it will maintain such status during the term of this Agreement. This Agreement is voidable at the option of the City if, at the time the League entered into this Agreement, it was not authorized to transact business in Virginia as a domestic or foreign business entity; or, having qualified to enter into this Agreement fails to maintain such status during its term.
23. COMPLIANCE WITH IMMIGRATION LAW. At all times that this Lease is in effect, the League shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed either by Title 8, Section 1324a of the United States Code or the U. S. Attorney General.
24. WAIVER. The waiver by City of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition on any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by City shall not be deemed to be a waiver of any preceding breach by League of any term, covenant, or condition of this lease, other than the failure of the League to pay the particular rental so accepted, regardless of City's knowledge of such preceding breach at the time of the acceptance of such rent.

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25. TIME OF THE ESSENCE. Time is of the essence of this Lease, and each and all of its provisions in which performance is a factor.
26. SUCCESSORS AND ASSIGNS. The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.
27. QUIET POSSESSION. Upon League paying the rent reserved hereunder, and observing and performing all of the covenants, conditions, and provisions on League's part to be observed and performed hereunder, League shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease.
28. PRIOR LEASES. This Lease contains all of the Leases of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior Leases or understanding pertaining to any such matters shall be effective for any purpose; no provision of this lease may be amended or added to except by an Lease in writing signed by the parties hereto or their respective successors-in-interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.
29. INABILITY TO PERFORM. This Lease and the obligations of the League hereunder shall not be affected or impaired because the City is unable to fulfill any of its obligations hereunder, or is delayed on doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the City.
30. SEVERABILITY. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provision shall remain in full force and effect.
31. CUMULATIVE REMEDIES. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
32. CHOICE OF LAW. This Lease shall be governed by the laws of the Commonwealth of Virginia, with venue in the courts of the City of Norfolk.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers as of the day and year first above written.

(SIGNATURE PAGES TO FOLLOW)

CITY OF NORFOLK

By: _____
City Manager

Attest:

City Clerk Date

State of Virginia
City of Norfolk, to-wit:


I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the ____ day of _____, _____, do hereby certify that Marcus D. Jones, City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names are signed to the foregoing Lease Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2015.

_____[SEAL]
Notary Public

Registration No. _____

Contents Approved:



Director, Recreation, Parks & Open Space

Approved as to form and correctness:

Deputy City Attorney

EXHIBIT A

LITTLE CREEK NATIONAL PONY
BASEBALL LEAGUE, INC.

By: _____

Title: _____

State of _____

City of _____, to-wit:

I, _____, a Notary Public in and for the City of
_____, in the State of _____, whose term of office expires on the
____ day of _____, _____, do hereby certify that _____
_____(Title), Little Creek National Pony Baseball League, Inc., whose name is signed to the
foregoing Lease Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2015.

_____[SEAL]
Notary Public

Registration No. _____

A

Fields Included —

**Tarrallton
Elementary &
Rec Center**

Parking lot for Baseball Fields

TARRALTON DRIVE

CORBETT AVENUE

An aerial photograph of a residential street. A white line is painted diagonally across the road, starting from the bottom left and extending towards the top right. The text "MILLARD STREET" is superimposed in white, bold, capital letters along the path of the white line. The surrounding area includes green grass, trees, and parts of houses.

FRIDEN STREET

HELSTLEY AVENUE

An aerial photograph of a residential street intersection. A white car is positioned at the intersection, and a yellow car is visible on the street to the right. The text "BENJAMIN AVENUE" is overlaid on the image, oriented diagonally.

ESTER COURT